



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-AR

August 5, 2013

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009.

ORDER ON RECONSIDERATION AND VACATING JUDGMENT

In the matter of:

Teletrust, Inc.	2008 and 2009	11-AR-80
-----------------	---------------	----------

I. INTRODUCTION

On July 12, 2013, Teletrust, Inc. (“Teletrust”) filed a Motion for Reconsideration (“Motion”) in which it requested the Massachusetts Department of Telecommunications and Cable (“Department”) to reconsider findings made against Teletrust for the company’s failure to file two annual returns. Because the Motion was filed after expiration of the appeal period with the Department, Teletrust also submitted a Motion to Submit Late Filing (“Motion to Late-File”). For the reasons discussed below, the Department grants both of Teletrust’s Motions and vacates its findings against the company.

II. BACKGROUND AND PROCEDURAL HISTORY

On June 3, 2013, the Department issued three Orders involving numerous companies’ failure to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009. *See* Orders D.T.C. 11-AR-A (“Order A”), D.T.C. 11-AR-B (“Order B”), and D.T.C. 11-AR-C (“Order C”). In Order C, the Department, *inter alia*, found that Teletrust failed to file its 2008 and 2009 Annual Returns (“2008 and 2009 Returns”) due to the Department on March 31, 2009, and March 31, 2010, respectively. Order C at 11. The Department also determined that Teletrust was likely not doing business in Massachusetts¹ and, therefore, did not assess statutory forfeitures against the company. Order C at 10-12. Further, the Department dismissed its investigation against Teletrust, cancelled the company’s Statement of Business Operations (“SBO”) and tariff on file with the Department, and directed removal of public access line service from the company’s payphones. Order C at 11, 24. Teletrust contacted the Department a few days prior to expiration of the appeal period inquiring about the procedural steps required to

¹ The Department noted that the companies named in Order C failed to respond to *any* communication from the Department, including the *Notice Opening Investigation*, involving those companies’ failure to file annual returns. Order C at 11-12. The Department found, further, that “because of the absence of any other significant indications that they are currently providing telecommunications services” the companies were not doing business in Massachusetts. Order at 12.

bring the company in compliance with the Department's requirements. Teletrust submitted its Motion for Reconsideration, Motion to Late-File, and delinquent returns on July 12, 2013.

III. ANALYSIS AND FINDINGS

A. MOTION TO ACCEPT LATE-FILING

The Department requires parties to file motions for reconsideration "within 20 days of service of a final Department Order." 220 C.M.R. § 1.11(10). The Department recognizes a strong public interest in the finality of its Orders (*Global NAPs Interconnection Agreement*, D.T.E. 02-21-A, *Order on Reconsideration* (Feb. 12, 2003) ("*D.T.E. 02-21-A*"), at 5-6 (citing *CMS Generation Co.*, D.P.U. 92-166-A at 5 (1993))), and the 20-day deadline serves the public interest by promoting this finality. *See D.T.E. 02-21-A* at 6 (citing Ruth C. Nunnally d/b/a L & R Enterprises, D.P.U. 92-34-A ("*D.P.U. 92-34-A*") at 4 (Feb. 8, 1993) (discussing extensions of 20-day judicial appeal period)). The Department may waive this deadline for good cause. 220 C.M.R. § 1.01(4); *D.T.E. 02-21-A* at 6. The Department has determined that:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

N.E. Tel. Alt. Reg. Plan, D.P.U. 94-50, *Order* (May 12, 1995) ("*D.P.U. 94-50*"), at 51-52. Under this standard, the Department must balance the effect of granting an extension on the party benefitting from the extension, on the public, and on any other party who might be affected. *Order B* at 7-8.

Although late-filed, the Department determines good cause exists to accept Teletrust's Motion for Reconsideration. In this case, the Department found no indication that Teletrust continued to operate in Massachusetts and, subsequently, directed removal of service from its

payphone lines. Order C at 11, 24. However, documentation submitted to the Department with Teletrust's Motions clearly shows the company's continued operations within the Commonwealth and its provision of service to consumers. *See* 2008 Return at 1 (reporting \$13,200.44 intrastate operating revenues); 2009 Return at 1 (reporting \$24,176.95 intrastate operating revenues). Denying Teletrust's Motion to Late-File would serve no public benefit and, instead, would ensure loss of service to a segment of consumers. Further, the Department knows of no other party that would be affected by a decision to grant Teletrust's request. Accordingly, for good cause, the Department grants Teletrust's Motion to Late-File. By granting this Motion, the Department now turns its attention to Teletrust's Motion for Reconsideration.

B. MOTION FOR RECONSIDERATION

The Department's standard for reconsideration is well settled. The Department grants reconsideration of previously decided issues only when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *Verizon Resale Tariff*, D.T.C. 06-61, Order on Reconsideration, at 5-6 (2012); *Western Mass. Elec. Co.*, D.T.E. 00-110-C, at 9 (2001); *Fitchburg Gas & Elec. Light Co.*, D.T.E. 98-51-A, at 5-6 (1999) ("*Fitchburg*"); *North Attleboro Gas Co.*, D.P.U. 94-130-B, at 2 (1995); *Comm. Elec. Co.*, D.P.U. 92-3C-1A, at 3-6 (1995); *Boston Edison Co.*, D.P.U. 90-270-A, at 3 (1991). Extraordinary circumstances warranting reconsideration include: (i) "previously unknown or undisclosed facts that would have significant impact upon the decision already rendered" newly brought to light, *Boston Edison Co.*, D.P.U. 90-270-A, at 2-3 (1991); or (ii) whether an issue was wrongly decided due to the Department's mistake or inadvertence. *Mass. Elec. Co.*, D.P.U. 90-261-B, at 7 (1991); *New England Tel. & Tel. Co.*, D.P.U. 86-33-J, at 2 (1989). Further, the Department has broad

discretion on whether to vacate a judgment. *See Complaint of MCI WorldCom, Inc.*, D.T.E. 97-116-E, *Order Denying Global NAPS, Inc.'s Motion to Vacate the Dept. Of Telecomms. and Energy's Orders*, D.T.E. 97-116-C and D.T.E. 97-116-D/99-39, and to Reinstate D.T.E. 97-116-E, at 11, 13 (Jul. 11, 2000) (“D.T.E. 97-116-E”) (“[t]he Department rules on each motion in each proceeding based on the form and contents of the motion before it and on the specific facts before the Department at that time ... [and] has broad discretion to decide whether or not to vacate a judgment”). For the reasons discussed below, the Department reconsiders its cancellation of Teletrust’s SBO and tariff, its direction to remove service from the Teletrust’s payphones, and, furthermore, vacates its judgment against the company.

Teletrust’s Motion itself does not present to the Department any extraordinary circumstances that warrant the Department’s reconsideration, but the Department finds that facts previously unknown or undisclosed on the record would have had a significant impact upon the Department’s decision. First, Teletrust identifies no previously unknown or undisclosed facts that would significantly impact the Department’s decision, other than claiming that it had no notice of the delinquency due to the actions of a former employee. Motion to Reconsider at 1-3; *See Complaint of CTC Communications Corp. against Verizon Mass. regarding Provisioning of Unbundled Network Elements at Tariffed Rates*, D.T.E. 04-87-B, *Order on Motions for Reconsideration and Relief of Verizon Mass. and Order on Cost Recovery for Non-Tariffed Services*, at 22 (Jan. 17, 2007) (affirming the Department’s prior order, in part, “because Verizon has not shown the existence of previously unknown or undisclosed facts that would have a significant impact on the decision already rendered”). *See also* Order C at 8 (“Every registered carrier avers that it has the managerial, technical, operational, and financial ability to comply with statutory requirements, and the Department gives registered carriers a presumption of

capability unless it specifically finds otherwise”) (citations omitted). Second, Teletrust does not identify any issue wrongly decided due to mistake or inadvertence made by the Department. Instead, Teletrust concedes that it was out of compliance with the Department’s requirements. Motion at 2-3. However, knowledge that the company continued to operate in the Commonwealth and received reportable revenues would have significantly impacted the Department’s “doing business” determinations and required analysis on whether the Department should assess statutory forfeitures or order any other action against Teletrust for the company’s failure to file its 2008 and 2009 Returns. *See* Order C at 9-12; 2008 and 2009 Returns. Further, the Department would have determined whether good cause existed to extend the filing deadlines if the company ultimately complied by filing their delinquent returns. *See* Order B at 10-14.

Although carriers must file an annual return by March 31, the Department may, for good cause, fix a date later than March 31 for a carrier to file its annual return. G. L. c. 159, § 32; G. L. c. 166, § 11. In determining whether good cause exists for an extension of the filing deadline, “the Department must weigh the carrier’s interest in receiving such an extension against the public’s interest and the interests of any other affected parties.” Order B at 12 (citing *D.P.U. 94-50* at 51-52). Teletrust’s returns were delinquent, but the company ultimately complied with the Department’s filing requirements. While Teletrust provides insufficient justification for its failure to meet its reporting obligations and not previously responding to the Department, and its interests in receiving an extension are substantial (cancellation of their authority to do business and removal of service to their payphone lines), there would be no benefit to the public if the Department refused to grant Teletrust an extension. The Department knows of no other party that would be affected by a decision to grant Teletrust an extension. The Department does not excuse Teletrust’s oversight about the status of its statutory requirements but finds that it acted in

good faith by ultimately cooperating with the Department and providing assurances that it will file annual returns on a timely basis going forward.

Accordingly, the Department, for good cause, establishes July 12, 2013, as the filing deadline for Teletrust's 2008 and 2009 Returns. *See* G. L. c. 166, § 11; Order B at 13; *D.P.U. 94-50*. The Department extends this one-time courtesy to Teletrust with the expectation that Teletrust will comply with the Department's requirements going forward. As Teletrust's 2008 and 2009 Returns are now current and for the other reasons stated above, the Department grants Teletrust's reconsideration request and vacates the judgment against the company.

IV. ORDER

Accordingly, after consideration, it is

ORDERED: That the Teletrust's Motion for Late-Filing is GRANTED; and it is

FURTHER ORDERED: That the Teletrust's Motion for Reconsideration is GRANTED and the judgment against the company is VACATED.

By Order of the Department:

/s/ Geoffrey G. Why _____
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.